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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**
9

10 JANE DOE,

11 Plaintiff

12 vs.

13 THE CITY OF LOS ANGELES; THE
14 LOS ANGELES POLICE
15 DEPARTMENT; JAMES FILLMORE
16 AND DOES 1-10 INCLUSIVE

17 Defendants.

18 CHRISTIAN CURRY, Plaintiff,

19 vs.

20 THE CITY OF LOS ANGELES; THE
21 LOS ANGELES POLICE
22 DEPARTMENT; LAPD
23 [HOLLYWOOD DIVISION] CHIEF
24 WILLIAM BRATTON; CLAY
25 FARRELL; LaMONT JERRETT;
26 JOE DUNSTER; JERRY PADILLA;
27 KARI HORTON; DAVID TOMILIN;
28 RAYMOND CONBOY; DAVID
TORRES; GEORGE HOOPES;
JEANNE HARRIS; MICHAEL
OPPELT; SILVINA YNIGUEZ;
SUSAN BRANDSTETTER; SEAN
MURTHA; MICHAEL KLEE; RUTH
KAWKINS-YU; AARON GREEN;
JUAN SANCHEZ; KURT JIMMY
FILLMORE.

Defendants

CASE NO. CV 07-1403-VAP(RNB)

Hon. Virginia A. Phillips Courtroom 2 (**Riverside**)

Hon. Robert N. Block, Courtroom 6D (**Santa Ana**)

Consolidated with:

CV 08-00237 VAP(RNB)

~~[PROPOSED]~~

**PROTECTIVE ORDER REGARDING
DISCLOSURE OF CONFIDENTIAL
INFORMATION (SERGEANT JEANNE
HARRIS)**

DISCOVERY

CUT-OFF: February 1, 2010

P.T.C. & TRIAL: None Set

1 Pursuant to the Parties' Stipulation for Protective Order in response to the Court's
2 order of November 12, 2009.

3 A. Defendants stipulate they will not call Los Angeles Police Department
4 ("LAPD" or "Department") Sergeant Jeanne Harris ("Sergeant Harris") to testify at the
5 time of trial in both matters, including as a rebuttal witness. Sergeant Harris, while
6 assigned to the Los Angeles Police Department's Professional Standards Bureau, was
7 involved in the Internal Affairs investigations relating to Plaintiff Jane Doe's arrest on
8 February 28, 2005 and Plaintiff Christian Curry's arrest on January 14, 2006;

9 B. Defendants will produce a copy of the Internal Affairs Report involving the
10 February 28, 2005 arrest of Plaintiff Jane Doe pursuant to the terms of a protective order
11 issued by the Court;

12 C. Defendants will produce a copy of the Internal Affairs Report involving the
13 January 14, 2006 arrest of Plaintiff Christian Curry pursuant to the terms of a protective
14 order issued by the Court;

15 D. Plaintiffs Jane Doe and Christian Curry will not take the deposition of Sergeant
16 Harris and said Plaintiffs will not make any further attempts to take the deposition of
17 Sergeant Harris pursuant to the Federal Rules of Civil Procedure, including but not
18 limited to Rules 26, 30, and 37. Additionally, Plaintiffs will not make any further
19 attempts to conduct discovery regarding Sergeant Harris;

20 E. If Plaintiffs wish to obtain any available recorded statement from the above-
21 referenced Internal Affairs reports, Plaintiffs shall provide payment to the Los Angeles
22 Police Department in advance thereof. The cost of the statements will be provided to
23 Plaintiff in separate correspondence. Any such statement which is produced shall be
24 subject to the terms of a protective order issued by the Court.

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1 Since the documents (and possibly recorded statements) to be produced pursuant
2 to this Stipulation are confidential in nature, the following Good Cause Statement is
3 included herein:

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5 **GOOD CAUSE STATEMENT**

6 1. In accordance with the above-referenced agreement, the City of Los Angeles
7 has agreed to produce copies of the following documents following the issuance of a
8 protective order in this matter:

- 9 a) The LAPD's Internal Affairs Investigation Report (and the attached addenda)
10 relating to the arrest of Plaintiff Jane Doe on February 28, 2005; and,
11 b) The LAPD's Internal Affairs Investigation Report (and attached addenda)
12 relating Plaintiff Christian Curry's arrest on January 14, 2006

13 2. The Los Angeles Police Department conducts internal administrative
14 investigations of Officer Involved Uses of Force and Complaint Investigations
15 (hereinafter "Administrative Investigations") and also maintains a personnel file on its
16 officers which includes personnel training information. Once an Administrative
17 Investigation is initiated, a formal investigation number is prepared. Such investigations
18 are reviewed by appropriate command officers in the Department. This review has
19 several purposes: (1) to determine whether the involved officers violated any
20 Department policies or procedures; (2) to determine whether administrative discipline
21 and/or retraining of the involved officers is necessary; and (3) to ascertain if police
22 policies and procedures in such areas as supervision, training, tactics, policies, etc.
23 should be modified. Administrative Investigations are an essential aid to providing
24 critical evaluation of Department officers and policies, and to determine the most
25 effective way to serve the citizens of Los Angeles.

26 3. The Department strives to maintain the confidentiality of an officer's personnel
27 package and Administrative Investigations, and the information contained therein, in
28 recognition of the protections granted pursuant to Penal Code § § 832.5, 832.7, and

832.8 and 1040 et al. of the California Evidence Code. Just as officer's personnel package is maintained as confidential, so too are the Administrative Investigations involving a particular officer(s). Administrative Investigations, like an officer's personnel package, include information which is both personal in nature and could potentially impact the liberty interests of the involved police officers and/or civilians named within. The information obtained from personnel packages and Administrative Investigations can, and have been used to initiate disciplinary action against officers, as well as evidence in disciplinary proceedings where the officer's conduct was considered to be contrary to Department policy. At this time, the parties have agreed that certain Administrative Investigation information will be provided pursuant to the terms set forth in this Protective Order, as well as the underlying Use of Force Report & Complaint Investigation Materials. As a result, the parties have agreed to this Proposed Protective Order covering these records for the following Good Cause reasons:

4. Administrative Investigations are maintained as confidential reports and are considered part of the individual officers' personnel record. Administrative Investigations include information which is both personal in nature and could potentially impact the liberty interests of the involved police officers and/or civilians named within. The information obtained from Administrative Investigations can and have been used to initiate disciplinary action against officers and as evidence in disciplinary proceedings where the use of force or tactics used were considered to be contrary to Department policy.

5. Unfettered release of Administrative Investigations have the potential for untold negative results. In terms of societal interests, it would inhibit the Department's ability to frankly engage in critical self-analysis. Public exposure of many Administrative Investigations could severely threaten the safety and well-being of the individuals, their families and associates. Many Administrative Investigations include embarrassing facts. At a minimum, disclosure of an entire Administrative Investigation would cause needless intrusion of privacy rights and have a negative effect on the

1 Department's effort to conduct these important investigations. Indeed, for all of these
2 reasons, persons interviewed by Investigators are advised that their statements are being
3 taken for the confidential use of the Department.

4 6. The materials and interview statements of Administrative Investigations are
5 maintained in protected files in order to maintain their confidentiality. They are not
6 routinely shown to other city departments. Even then, information which is not clearly
7 relevant to the rationale governing the request is redacted to ensure the utmost regard for
8 the privacy rights of the mentioned within a given report. The reports are not available
9 to the general public except by court order. In all instances, the Department requests in
10 camera hearing to determine the relevance for releasing all or part of a given report,
11 again to ensure the constitutionally protected privacy rights of those named or otherwise
12 identified within the body of the report.

13 7. In each case involving court-ordered disclosure of information from a
14 Administrative Investigation sought in state or federal court, it is Department policy to
15 seek a protective order limiting use of the information to the case at trial and identifying
16 those persons who may properly be granted access to the information. Absent a
17 protective order, it becomes unrealistic to conceive that the large numbers of attorneys,
18 secretaries, law clerks, paralegals and witnesses involved in many cases will be able to
19 maintain proper confidence of personal, private material absent an order which clearly
20 delineates their responsibilities. The orders further request that said records be returned
21 to the Department after the case has terminated, either by final judgment or otherwise.
22 This request serves to ensure that intrusion into the privacy and employment rights of
23 those involved is limited to the particular case in which the facts are relevant.

24 8. Even with a carefully written protective order, the release of portions of an
25 Administrative Investigation, without prior judicial review to determine relevancy and
26 assess privacy concerns, ignores the constitutional protection given to individual privacy
27 under the United States and California Constitutions and which a third-party such as the
28 Department is obligated to assert. The issuance of an appropriate protective order makes

1 certain that these privacy concerns are not compromised beyond that degree necessary to
2 the issues before the court. Accordingly, on behalf of the Los Angeles Police
3 Department and those persons identified within a given Administrative Investigation, the
4 Defendants respectfully request these procedural protections in the instant case.

5 9. Accordingly, the parties hereby stipulate that the above-referenced Internal
6 Affairs Investigations and Use of Force Investigation are confidential in nature and are
7 appropriately produced pursuant to a protective order. (See *Soto v. City of Concord*, 162
8 F.R.D. 603, 616 (N.D. Cal. 1995.))

9 **TERMS OF THE PROTECTIVE ORDER**

10 10. If the Protective Order is issued, Defendants will produce the above-referenced
11 documents wherein the documents will be marked in one of the following ways:
12 “Confidential,” “Confidential Documents,” “Confidential Material,” “Subject to Protective
13 Order” or words of similar effect. Documents, writings, or other tangible items, so
14 designated, and all information derived therefrom (hereinafter, collectively referred to as
15 “Confidential Information”), shall be treated in accordance with the terms of this stipulation
16 and protective order.

17 11. Confidential Information may be used by the persons receiving such information
18 only for the purpose of this litigation.

19 12. Subject to the further conditions imposed by this stipulation, Confidential
20 Information may be disclosed only to the following persons:

21 (a) Counsel for the parties, parties, and to experts, investigators licensed by the State
22 of California, paralegal assistants, office clerks, secretaries and other such
23 personnel working under their supervision.

24 (b) Such other parties as may be agreed by written stipulation among the parties
25 hereto, or by Court order.

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1 13. Prior to the disclosure of any Confidential Information to any person described
2 in paragraph 12(a) or 12(b), counsel for the party that has received and seeks to use or
3 disclose such Confidential Information shall first provide any such person with a copy of
4 this stipulation, and shall cause him or her to execute, on a second copy which counsel shall
5 thereafter serve on the other party the following acknowledgment:

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7 “I understand that I am being given access to Confidential Information
8 pursuant to the foregoing stipulation and order. I have read the Order
9 and agree to be bound by its terms with respect to the handling, use and
10 disclosure of such Confidential Information.

11 Dated: _____/s/_____”
12

13 14. Upon the dismissal of either Plaintiff Jane Doe’s action and/or Plaintiff Christian
14 Curry’s action or the final termination of this litigation, including any appeal pertaining
15 thereto, all Confidential Information and all copies thereof shall be returned to the
16 Defendants City of Los Angeles through the City Attorney’s Office.

17 15. If any party who receives Confidential Information receives a subpoena or other
18 request seeking Confidential Information, he, she or it shall immediately give written notice
19 to the Defendants’ counsel, identifying the Confidential Information sought and the time in
20 which production or other disclosure is required, and shall object to the request or subpoena
21 on the grounds of this stipulation so as to afford the Defendants an opportunity to obtain an
22 order barring production or other disclosure, or to otherwise respond to the subpoena or
23 other request for production or disclosure of Confidential Material. Other than objecting on
24 the grounds of this stipulation, no party shall be obligated to seek an order barring
25 production of Confidential Information, which obligation shall be borne by the Defendants.
26 However, in no event should production or disclosure be made without written approval by
27 the Defendants’ counsel unless required by court order arising from a motion to compel
28 production or disclosure of Confidential Information.

1 16. Any pleadings, motions, briefs, declarations, stipulations, exhibits or other written
2 submissions to the Court in this litigation which contain, reflect, incorporate or refer to
3 Confidential Information shall be filed and maintained under seal either pursuant to Ex Parte
4 Application and Order of the Court or Stipulation of the parties and Order of the Court.
5 (Local Rule 79-5, et seq.). If a document or pleading submitted to the Court, as described
6 in this paragraph, makes only a general reference to any document or information contained
7 therein covered by this protective order, but does not quote or describe its contents in any
8 specific way, and does not include the protected document itself, then the party or parties
9 need not enter into a Stipulation or otherwise seek an order to file the documents under seal.
10 In entering into a Stipulation for the filing of Confidential Information under seal, neither
11 one of the parties waives its right to object to the admissibility of said information in
12 connection with that proceeding or to move to exclude said information prior to or during
13 the time of trial.

14 17. The parties agree that the spirit of confidentiality as protected in this order will
15 apply to all proceedings. To that end, before any protected document or any information
16 derived therefrom is to be put forward, admitted into evidence, discussed in detail or
17 otherwise publicized in Court, the party raising the protected document will inform the other
18 parties and allow for a motion to the Court to close the proceedings to the public.

19 18. Nothing herein shall prejudice any party's rights to object to the introduction of
20 any Confidential Information into evidence, on grounds including but not limited to
21 relevance and privilege.

22 19. During the course of depositions, when counsel makes an objection to a question
23 concerning a protected document or information contained therein, which is the subject of
24 this Stipulation and protective order, or concerning a general area that counsel believes
25 should be covered by the scope of this Stipulation and protective order, those witnesses (as
26 identified in Paragraph 12(herein) may answer the question, without waiving the objections,
27 and the questions and answers to those questions will be sealed and covered by the terms
28 of this protective order. Counsel and the parties reserve the right to object to the disclosure

1 of confidential or private information which is not the subject of this Stipulation and
2 protective order. Any documents deemed confidential pursuant to this protective order will
3 be sealed, if they are used as exhibits in any deposition. This agreement does not waive any
4 objections counsel may make, including objections unrelated to the reasons for this
5 protective order.

6 20. Each person receiving or reviewing Confidential Information must consent to the
7 jurisdiction of the United States District Court for the Central District of California,
8 including the Magistrate Judge assigned to this case, with respect to any proceeding relating
9 to enforcement of this Order, including, without limitation, any proceeding for contempt
10 and/or monetary sanctions.

11 21. This Stipulation may be signed in sub-parts and may be transmitted by
12 facsimile as if it was the original document. Defendants will lodge this executed Stipulation
13 and the Proposed Protective Order with the Court for approval.

14 **IT IS SO ORDERED.**

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18 Dated: January 13, 2010

A handwritten signature in dark ink, appearing to read "R. N. Block", is written over a light-colored rectangular background.

Honorable Robert N. Block, Magistrate Judge
United States District Court